

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

ORACLE USA, INC., ET AL.,)	CASE NO: 2:10-CV-00106-LRH-PAL
)	
Plaintiffs,)	CIVIL
)	
vs.)	Las Vegas, Nevada
)	
RIMINI STREET, INC., ET AL.,)	Tuesday, July 3, 2012
)	
<u>Defendants.</u>)	(9:31 a.m. to 9:58 a.m.)

MOTION HEARING

BEFORE THE HONORABLE PEGGY A. LEEN,
UNITED STATES MAGISTRATE JUDGE

Appearances: See Next Page

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Las Vegas, Nevada; Tuesday, July 3, 2012; 9:31 a.m.

(Call to Order)

(Telephonic and courtroom appearances)

THE CLERK: All rise.

THE COURT: Good morning.

ALL: Good morning.

THE COURT: Please be seated.

THE CLERK: Your Honor, we are now calling the motion hearing in the matter of *Oracle, USA, Inc. versus Rimini Street, Inc.* The case number is 2:10-cv-0106-LRH-PAL.

Beginning with plaintiff's counsel, counsel, please state your names for the record.

MR. HOWARD: Good morning, your Honor. Geoff Howard from Bingham McCutchen on behalf of the plaintiffs, Oracle.

MR. POCKER: Your Honor, Richard Pocker, Boies, Schiller and Flexner, also on behalf of the plaintiffs, Oracle.

MR. ALLEN: Good morning, your Honor. West Allen from Lewis and Roca on behalf of Rimini Street, and on the telephone is Rob Reckers from Shook, Hardy and Bacon as well for Rimini Street.

MS. ANDERSON: Good morning, your Honor. Dominica Anderson, Duane Morris, on behalf of CedarCrestone, and Mr. Ryan Loosvelt. We also have on the phone Mr. Alan Tannenwald.

MR. MAROULIS: And good morning, your Honor. It's

1 James Maroulis from Oracle for plaintiffs on the phone as well.

2 **THE COURT:** All right, Counsel. I have read the
3 moving and responsive papers with the exception of the things
4 that were filed late Friday afternoon during my criminal duty
5 work and I received a flood of papers, not just on this case,
6 but on the other matters I have on calendar today. I have read
7 all of the other moving responsive papers.

8 Let me take up preliminarily this housekeeping
9 matter. Is there any additional need to address the case
10 management issues the parties raised in the June 29th joint
11 status report? If I understand correctly, you're asking for a
12 modification of the deadline for filing dispositive motions.

13 **MR. UNIDENTIFIED:** That's correct, your Honor. An
14 extension of the deadline to file its dispositive motions and a
15 suspension of the pretrial statement filing date until 30 days
16 after the dispositive motions.

17 **THE COURT:** All right. And the dispositive motions
18 are currently due when?

19 **MR. UNIDENTIFIED:** They're currently due July 31st.

20 **THE COURT:** And you're requesting a 30-day extension
21 of that deadline?

22 **MR. UNIDENTIFIED:** Correct, your Honor.

23 **THE COURT:** (indiscernible) and (indiscernible) local
24 rule applies, so you have 30 days from the decision of
25 dispositive motions in which to file (indiscernible).

1 **MR. UNIDENTIFIED:** Thank you, your Honor.

2 **THE COURT:** And let me hear now on the merits of the
3 dispute involving the motion to modify the protective order
4 with respect to CedarStone.

5 Mr. Howard?

6 **MR. HOWARD:** Thank you, your Honor.

7 Your Honor, the issue before the Court is whether it
8 should modify the protective order to allow information that
9 Oracle has now learned in discovery -- specific, identified
10 information -- to protect and enforce its IP rights against
11 CedarCrestone. The Court considers this issue in light of the
12 Ninth Circuit's strong policy in favor of access to collateral
13 litigants to meet their needs in collateral litigation. And
14 there's two issues that the Court considers, two prongs of that
15 test.

16 The first is the material relevance. There really
17 isn't any dispute about that. I don't think you've seen any
18 contest as to whether this underlying material is relevant. In
19 fact, the vast majority of it is Oracle's code. It's Oracle's
20 software that was produced to Oracle, had been copied,
21 modified, and distributed by CedarCrestone to its customers.
22 So, I don't think that issue is in dispute.

23 The second is whether there is a reliance interest
24 that outweighs the strong policy favoring access for collateral
25 litigants to meet their needs in the litigation. As to that,

1 your Honor, I don't think there is really any serious contest
2 either. The protective order that the parties negotiated and
3 entered expressly allows for modification. In fact, at
4 paragraph 17 of the protective order it specifically says that
5 entering into, producing or receiving confidential information,
6 Oracle is in receipt of the confidential information, shall
7 not -- paragraph 17D -- quote:

8 "Prejudice in any way the rights of a designating or
9 receiving party to seek a determination by the Court
10 whether any discovery material should be subject to
11 the terms of this protective order."

12 And, obviously, one of the terms of the protective
13 order is whether you can use the information in a litigation
14 other than this one.

15 In addition, the law requires a specific showing, a
16 specific and detailed showing, of prejudice based on that
17 reliance, and, of course, there isn't reliance presumed when
18 there is a blanket protective order like this one. And there
19 hasn't been any showing of specific prejudice as to any
20 document; not the testimony that we put before the Court, not
21 the 625 pages of documents that were produced, not the two-
22 gigabyte disk that has our Oracle code on it. There just
23 hasn't been any articulated specific showing of prejudice by
24 CedarCrestone other than the fact that they will be the
25 recipient of an action by Oracle to enforce and protect its IP

1 rights. But that's not the kind of specific prejudice that's
2 been shown. It's not a trade secret; it's not confidential.
3 Again, it's our code, so it's hard to see how it could be. And
4 they've said that they're at some point in the future shutting
5 this down, so it's hard to see how that could contribute any
6 prejudice to them at all.

7 And, to the contrary, I would submit to your Honor
8 that there really isn't any better showing of good cause for a
9 litigant to modify the protective order than the circumstances
10 here, where it has now discovered that its partner has been
11 misusing, copying, infringing its IP, and it now needs to,
12 having been unable to resolve that, now needs to stop that and
13 enforce and protect its rights.

14 Those are the issues that I think are before the
15 Court, and I submit to your Honor that it is a very
16 straightforward and fairly simple application of the Ninth
17 Circuit test.

18 **THE COURT:** Thank you, Mr. Howard.

19 Opposing counsel?

20 **MS. ANDERSON:** Thank you, your Honor.

21 I know your Honor is familiar and has read all the
22 papers, but I think we have to step back and look at how the
23 parties ended up being where they are today. Oracle -- and
24 CedarCrestone is a platinum partner with Oracle -- Oracle comes
25 to CedarCrestone and says, "We need some of your documents to

1 help us prosecute our case against Rimini." CedarCrestone
2 starts in the discussions; a subpoena is issued. At that point
3 they are looking at potentially quashing -- filing a motion to
4 quash the subpoena. The subpoena goes out; we negotiate over
5 five months over the scope of the subpoena, the production --

6 **THE COURT:** Instead of litigating before the Court
7 and getting a determination whether you had to turn over the
8 documents or not.

9 **MS. ANDERSON:** That's right. But -- but -- I mean,
10 obviously, the Court's do encourage --

11 **THE COURT:** So, both sides relied in --

12 **MS. ANDERSON:** That's right.

13 **THE COURT:** -- negotiating the protective order about
14 what this Court would do --

15 **MS. ANDERSON:** That's right.

16 **THE COURT:** -- in terms of whether or not Oracle was
17 going to get the documents and you were going to be required to
18 produce them.

19 **MS. ANDERSON:** Right. That's absolutely right, and
20 the parties negotiated instead of coming to the Court, which is
21 what parties should do. But the scope of the protective order
22 was limited to this sense that the documents could be used for
23 purposes of the prosecution of the Rimini action, clearly.

24 **THE COURT:** All right. But the point is both sides
25 avoided the determination of whether or not they were relevant

1 to this action and should be produced and, if so, what the
2 Court would order concerning how to protect the documents that
3 were produced in this case.

4 **MS. ANDERSON:** That's right, your Honor. However, we
5 did rely on the terms of the protective order --

6 **THE COURT:** Sure.

7 **MS. ANDERSON:** -- and stipulated to that effect.

8 After we signed the protective order and the
9 supplemental stipulation, we began to produce documents. There
10 were approximately three gigabytes of documents produced. Some
11 of those were marked confidential. Only 64 documents or pages
12 were marked highly confidential. Five pages of those are
13 client names. Fifty-nine pages of those are proprietary
14 methodology or code. So, it was a very selective process that
15 CedarCrestone made in analyzing each and every document and
16 marking them in a very specific way.

17 Then Oracle asked for a deposition, and again
18 CedarCrestone, trying to be helpful, provided a witness under a
19 30(b)(6). Oracle had that transcript for approximately a
20 month. They designated the entire transcript except for three
21 exhibits as highly confidential. Then they sent it to
22 CedarCrestone, and CedarCrestone said that designation is fine.
23 All along CedarCrestone has been very specific on how they have
24 designated their documents. It hasn't been a blanket
25 everything is protected.

1 Oracle then says, once we got the documents, we said,
2 "Gee, maybe we have some action against CedarCrestone as well."
3 What's really troubling is in their pleadings, in their
4 motion -- it's at page three -- they say, "Well, we actually
5 started thinking about CedarCrestone either in the TomorrowNow
6 litigation or maybe the latest, at the Rimini answer, when
7 Rimini filed their answer," which is certainly prior to the
8 negotiations on protective order, prior to our production of
9 documents, and clearly prior to the deposition testimony. So,
10 while CedarCrestone -- while Oracle is saying, "We didn't know
11 until after; oops, we kind of stumbled into our findings,"
12 their own pleadings counter that.

13 Now, the Court's asked did we not come to the Court
14 for a ruling. That's true. But one can imagine, when you look
15 at the exhibits, one can imagine how the negotiations would
16 have been very different had Oracle said, "You know, we are
17 thinking that we may have some claim against you; we'd like you
18 to produce documents." Would we have still -- if they had
19 subpoenaed us, would we still have had to produce documents?
20 Maybe. We would have been before the Court; we would have been
21 here on a motion to quash. We certainly would have produced a
22 different probably volume of documents, the protective order
23 would have been different, the negotiations would have been
24 different, the scope of that subpoena that we would have
25 responded to would have ultimately been different. Would we

1 have produced a witness? Maybe. Maybe if there had been a
2 motion for a protective order on that, perhaps it would have
3 gone forward but on a more limited scope, but the truth is that
4 Oracle basically lulled CedarCrestone into thinking it was
5 helping its platinum sponsor -- or its sponsor, its platinum
6 partner, into prosecuting its case against Rimini.

7 So, under that, you have to say, "Was CedarCrestone
8 set up?" It has that appearance, that we were lulled into
9 producing the documents under the guise of the Rimini action
10 and now Cedar -- and now Oracle is asking the Court to
11 wholesale lift the protective order so they can use everything
12 against CedarCrestone.

13 The Ninth Circuit cases that Oracle's counsel cited,
14 clearly that's the test. The problem is in the Ninth Circuit
15 and in any other circuit there is no case anywhere remotely
16 like this. Your typical case is plaintiff -- as I'm sure your
17 Honor knows -- plaintiff versus defendant; those parties are in
18 litigation, they produce documents, a third party says, "I'd
19 like to intervene into the case, obtain those documents for
20 purposes of an already existing, separate litigation."

21 Oracle relies on the *Fultz* (phonetic) case, which is
22 your Ninth Circuit case, but there the Court found there was no
23 reliance, and there the party who was seeking the documents
24 hadn't drafted the protective order, and there already was
25 collateral litigation. We make the point, obviously, there is

1 no collateral litigation. So, Oracle says, "Well, the CBS case
2 says you can lift a protective order to get documents to file a
3 separate litigation." And that was a different situation, like
4 most cases, where CBS sued defendant, E-T-I-L-I-Z-E. So, those
5 were two parties in litigation; they produced documents under
6 protective order; and then CBS says, "Well, we think we need to
7 sue you in a separate litigation" -- I think it was because of
8 patent rules -- but already the two parties were litigants.
9 So, they had their guard up; they knew what they were producing
10 was already part of litigation.

11 Here, obviously, we believe that Oracle lulled us
12 into producing documents to help them in their prosecution of
13 Rimini. The reliance is significant. We negotiated over a
14 five-month period. We were incredibly careful about how we
15 designated documents. There was a limitation and use provision
16 or determination in the protective order that could only be
17 used for Rimini, the Rimini litigation. We produced over the
18 three -- the three gigabytes of documents and were very careful
19 how we marked them.

20 So, the concept that this was a blanket protective
21 order that shouldn't have as much weight as a non-blanket is
22 inappropriate, as well as what -- when I saw that in Oracle's
23 papers, I was surprised because Oracle drafted the protective
24 order. And in the protective order on page two it says, quote:

25 "Parties acknowledge that this protective order does

1 not confer blanket protection on all disclosures."

2 So, again, the party who drafted it is telling us
3 it's not a blanket protective order, we treat it as not a
4 blanket protective order, we spend all of this time very
5 carefully out of three gigabytes just marking a very limited
6 set of documents as highly confidential, and then -- and then
7 this happens.

8 The case that is closest is a case which we found in
9 looking at the *CBS* case after they filed their reply. And it's
10 called *Avago*, A-V-A-G-O, and I apologize; I have a copy of it
11 if the Court wants it. The citation is 2011 Westlaw 5975243,
12 Northern District of California, November, 2011. *Avago*
13 Technology sues *IPtronics* for patent infringement. The parties
14 produce documents pursuant to protective order. When they look
15 at the documents, *Avago* says, "Aha. You, *IPtronics*, have been
16 in conspiracy with our own employees." Therefore, they come
17 back to the Court and they ask for a motion -- they file a
18 motion to lift the protective order so that *Avago* could share
19 the documents with its own employees and permit it to use the
20 evidence in a potential civil litigation. The Court said no.

21 And they distinguished *CBS*, and actually *Avago* has
22 been cited as disapproving of *CBS*, but they distinguish it
23 saying *Avago*, one, has not identified with particularity the
24 specific documents it seeks to disclose. Same thing we have
25 here. Two, they highlighted that *Avago* had not even identified

1 the specific Avago individuals to whom disclosures were sought,
2 who they would be sharing the documents with. Same thing here.
3 Three, there is no collateral proceedings pending for which the
4 relevance of the disputed information may be evaluated. Same
5 as here.

6 And the quote from the Court, if I might, your Honor,
7 says, quote:

8 "Avago has not even provided any specific information
9 regarding the collateral proceedings that it
10 contemplates. All the Court has before it to weigh
11 against IPtronics' legitimate reliance in producing
12 documents are Avago's allegations regarding what it
13 might pursue that are supported by little more than
14 an attorney declaration."

15 So, the Avago case is as close as you can get on
16 point here. Now, even in Avago you've got litigant versus
17 litigant. And here we're a step -- several steps removed,
18 because we're a third party lulled into producing.

19 Like Avago, though, we've had -- there is ample
20 evidence of reliance by CedarCrestone in the months of
21 negotiation. I've gone over that. Unlike Avago, though,
22 Oracle has really created this situation, and we believe that
23 based on similar case law Oracle needs to sleep in the contract
24 that it created.

25 We believe, then, the balancing factors that the

1 Court must look at -- the strong factors of reliance, the
2 unusual factual circumstance we have here, no pending
3 litigation, Oracle created the situation, everything we've been
4 discussing -- that the Court -- the request of the Court should
5 be denied.

6 **THE COURT:** Thank you.

7 Mr. Howard, this is your motion. You get the last
8 word.

9 **MR. HOWARD:** Thank you, your Honor. I'll be brief.

10 I don't think your Honor heard anything addressed to
11 the two factors that the Court considers under the Ninth
12 Circuit law.

13 **THE COURT:** No; she acknowledges that's the two --
14 that's the two-prong test.

15 **MR. HOWARD:** Yeah. And, so, it's conceivably
16 relevant, and there is no specific showing of prejudice. So,
17 the issue is whether an infringer, somebody who has misused
18 confidential information --

19 **THE COURT:** Someone you're accusing of misusing.

20 **MR. HOWARD:** That's right. We are. But we have --
21 we have provided the specific details to the Court in the
22 testimony. Whether there is no recourse in those circumstances
23 or whether at least the -- Oracle should be allowed to take
24 action to enforce and protect.

25 Now, a couple of important points. The discussion

1 about the blanket designations and what was confidential and
2 highly confidential; I just don't think that's relevant to this
3 motion. Our proposed modification preserves --

4 **THE COURT:** Your very motion says the fact that the
5 initial protective order was a blanket protective order is a
6 factor weighing in favor of modifying it.

7 **MR. HOWARD:** Yes. But we have -- as the *Fultz* court
8 did, we have proposed that the designations that CedarCrestone
9 has applied to their materials will be preserved in the
10 modified protective order.

11 **THE COURT:** Subject to a further motion to modify,
12 because that's what the protective order says.

13 **MR. HOWARD:** That's right. And all parties know that
14 when they designate materials pursuant to this protective order
15 one side or the other -- well, anybody can challenge the
16 confidentiality of those materials.

17 And that was the second point I was going to make,
18 was that the language that counsel read to the Court, the
19 sentence two of the protective order, that's exactly the point
20 it makes. It says that you cannot rely on any kind of blanket
21 protection for any of these materials because the protection
22 that it affords are only -- extends only to the limited
23 information or items that are entitled under applicable legal
24 principles to treatment as confidential. And the legal
25 principles that are applicable here don't apply to keep those

1 materials confidential within the terms of this protective
2 order. It should be modified to allow use in collateral
3 litigation to meet the needs of the collateral litigant, here
4 Oracle.

5 Finally, this idea that the protective order was
6 fraudulently induced; those are my words, but that's my
7 paraphrase of the argument that I heard.

8 **THE COURT:** You lulled them into producing things.

9 **MR. HOWARD:** Yes. We lulled them into producing --
10 no. Two points; well, maybe three. First, there was a
11 subpoena in the SAP litigation as well. And they know --

12 **THE COURT:** This protective order closely follows the
13 protective order that was entered into in SAP.

14 **MR. HOWARD:** It's similar.

15 **THE COURT:** Uh-huh.

16 **MR. HOWARD:** It's similar. By the way, Oracle
17 drafted neither of those. It negotiated at great length both
18 of those with the other parties in the litigation. I don't
19 think that's either here nor there. But they knew what the
20 subject matter of the lawsuit was; they knew what the subject
21 matter of that subpoena was; and they knew what the subject
22 matter of this subpoena was. It was specifically directed --
23 and it's been presented to the Court -- at their business
24 practices, what they did with the software because Rimini had
25 raised the issue that they were doing the same thing as Rimini

1 was.

2 So, the idea that they were lulled in under false
3 pretenses I think just can't be right, and I think, to come
4 back to the issues, this is as best a good cause as you could
5 find to allow modification. They will have defenses perhaps;
6 they will have something to say about the confidentiality of
7 it; but here the issue is simply whether we can, as *Fultz* says,
8 meet the needs of the collateral litigant.

9 **THE COURT:** All right. We're not doing
10 point/counterpoint. You did file a motion in the alternative
11 to stay this action, which I will hear briefly from you on
12 that, to stay the order on modification pending the outcome of
13 this case.

14 Ms. Anderson?

15 **MS. ANDERSON:** Well, the allegations by Oracle are
16 that what they're alleging CedarCrestone did wrong is the same
17 thing that what Rimini did wrong. And, so, rather than dealing
18 with the motion before your Honor today and what falls out from
19 that, including that if your order were to be inclined to grant
20 that motion, we would be asking your Honor to stay enforcement
21 of that while we file a motion for reconsideration. Now,
22 obviously, we don't believe it should be modified at all, but
23 that's how serious, you know, obviously, we feel about this.
24 So, we thought, well, if they're prosecuting this case against
25 Rimini and they're alleging it's the same thing, then why not

1 wait until we see what comes of that?

2 And one other point, just that on the prejudice
3 point. And I apologize; I should have said this. But the
4 prejudice is clearly not just the lawsuit that they are
5 threatening. Prejudice is that Oracle is a competitor with
6 CedarCrestone in some ways of the business. Now, whether they
7 are wanting to put out of business all of their competitors I
8 don't know. But there is definitely prejudice, the fact that
9 their employees -- and, again, without specificity of who would
10 get to see the documents for what purpose, there is prejudice
11 to CedarCrestone if those documents were produced willy-nilly
12 to anybody within Oracle, beyond the threat of this lawsuit.

13 Thank you, your Honor.

14 **THE COURT:** The motion to modify the protective order
15 is denied. The *Fultz* test is certainly the test in the Ninth
16 Circuit, however, key to the Court's analysis in this case is
17 that there is no pending collateral litigation. And this is a
18 blanket protective order. There was not a determination on a
19 document-by-document basis to determine whether or not
20 individual documents were appropriately designated as
21 discoverable in this case or subject to the protective order
22 governing confidentiality. The Court made no such finding, and
23 it was done to facilitate the parties' discovery exchanges.
24 Both sides entered into a negotiated protective order in order
25 to avoid a judicial determination of whether or not any

1 particular documents were protected from disclosure and the
2 terms of any protection that the Court might deem appropriate
3 in this case.

4 At the end of the day, however, Counsel for
5 Crestone -- CedarCrestone, federal discovery is about obtaining
6 the truth. And although there is no currently pending
7 collateral litigation which persuades the Court that there is
8 no need to modify the protective order at this time, the
9 materials that are the subject matter of the motion would
10 appear to be relevant to a determination of future litigation.

11 Of course, what's involved in this entire case is
12 Rimini's determination that what it does is what everybody else
13 does who performed the same type of function; it's the industry
14 standard, and it's appropriate that it's not protected by
15 Oracle's intellectual property. And that's what this lawsuit
16 will determine, in large part.

17 But at this time, where there is no collateral
18 litigation, I agree with counsel for the non-party that
19 allowing a modification in the absence of a pending collateral
20 litigation -- and no description of a specific intent to have a
21 specific form of collateral litigation, especially since
22 counsel for the non-party has indicated that shutting this
23 business down to avoid future problems with the potential
24 plaintiff in the case, and it makes no sense at all to modify
25 the protective order, particularly on a wholesale basis. And I

1 also agree that there is nothing to avoid repetitious or
2 duplicative discovery that wastes either of the parties'
3 resources when there is no pending case.

4 So, for these reasons the motion for protective order
5 is denied, but counsel for the non-party should be on notice
6 that if and when there is a pending collateral litigation,
7 preliminarily it appears that there is more than good cause to
8 modify the protective order for appropriate documents that
9 demonstrate any infringing conduct.

10 And I have a 10:00 o'clock. I'm going to call it.
11 Is there any other pending matter that needs immediate
12 resolution on behalf of the litigants in this case, *Oracle*
13 *versus Rimini*, that I haven't addressed by giving you the
14 relief on the scheduling order?

15 Mr. Howard?

16 **MR. HOWARD:** No, your Honor.

17 **THE COURT:** Mr. Allen?

18 **MR. ALLEN:** No, your Honor.

19 **THE COURT:** All right. Thank you.

20 **MS. ANDERSON:** Thank you, your Honor.

21 (Proceeding was adjourned at 9:58 a.m.)

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

July 17, 2012

Dated

TONI HUDSON, TRANSCRIBER